

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RYAN DEAN KOCH,

Defendant-Appellant.

UNPUBLISHED

February 2, 2001

No. 224791

Oakland Circuit Court

LC No. 1999-167566-FH

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of receiving or concealing stolen property, MCL 750.535(3)(a); MSA 28.803(3)(a), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with larceny, MCL 750.356(3)(a); MSA 28.588(3)(a), and receiving or concealing stolen property in connection with the theft of two dies. Dwayne Stone, a security guard at Vehma International, testified that on the evening of March 30, 1999 he observed a light tan van parked near a stack of dies. The back door of the van was open. He ordered the occupants of the van to leave the property. The van left the property immediately. Stone identified defendant as the driver of the van. He reported the incident to the plant manager, who contacted the police. Timothy Dana, an employee of Style Craft, testified that on the morning of March 31, 1999, he received a telephone call from Vehma regarding the incident on Vehma's property. Dana checked his own stock of dies, and discovered that two were missing. He last saw the dies on March 29, 1999, when he took inventory. Dana stated that the dies weighed 210 pounds and 354 pounds. The dies were valued at \$2,150 and \$6,200.

Officer Morgan testified that shortly after receiving a report of a van being ejected from Vehma's property, he stopped a van matching that description. He observed two dies in plain view in the van, and arrested defendant and the passenger, Dennis Rotarius. Morgan indicated that defendant did not seem to be surprised when he was arrested, and did not say anything. Rotarius testified that he made his living by selling scrap metal. He admitted that he stole two dies from Style Craft on the evening of March 29, 1999, and said that he acted alone. He testified that he was merely giving defendant a ride when they were arrested on March 30, 1999, and that defendant had no knowledge that the dies were stolen. Rotarius admitted that at the

preliminary examination he stated that the dies were too heavy for one person to lift. He indicated that he moved the dies to his van by rolling them along the ground. Rotariou denied telling a detective that he and defendant stole the dies from Style Craft. However, Detective Himrod testified that Rotariou admitted that he and defendant stole the dies on March 30, 1999. Defendant's chiropractor, Dr. Kay, testified that on March 26 and 29, 1999, she treated defendant for a back injury sustained during the course of his employment. Defendant had been instructed to avoid all strenuous activity, including lifting and bending.

The jury acquitted defendant of larceny, but convicted him of receiving or concealing stolen property.

Defendant argues that insufficient evidence was produced to support his conviction of receiving or concealing stolen property in that it failed to establish either his knowledge that the dies were stolen, or his possession of the dies. We disagree. In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). A trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of receiving or concealing stolen property with a value of at least \$1,000 but less than \$20,000 are that: (1) the property was stolen; (2) the property had a fair market value of at least \$1,000 but less than \$20,000; (3) the defendant bought, received, possessed, or concealed the property with knowledge that the property was stolen; and (4) the property was identified as being previously stolen. MCL 750.535(3)(a); MSA 28.803(3)(a); see also *People v Gow*, 203 Mich App 94, 96; 512 NW2d 34 (1993). While the crime of receiving or concealing stolen property requires knowledge on the part of the defendant that the property was stolen, the offense is not a specific intent crime. *People v Ainsworth*, 197 Mich App 321, 324-325; 495 NW2d 177 (1992). The requisite guilty knowledge can be inferred from the circumstances. Factors such as the defendant's possession of the property shortly after it was stolen, and a lack of any reasonable explanation for the defendant's possession of the property, support an inference that defendant knew that the property was stolen. *People v Salata*, 79 Mich App 415, 421-422; 262 NW2d 844 (1977).

Here, the undisputed evidence established that the dies were stolen from Style Craft and that their values exceeded \$1,000. The evidence further established that defendant and Rotariou were friends and often traveled together, and that defendant knew of Rotariou's scrapping activities. Defendant and Rotariou were observed at Vehma, near a stack of dies, no more than one day after the dies were stolen from Style Craft. The vehicle hatch was open and the lights were off. When the security guard approached, defendant and Rotariou left immediately, with defendant driving. There was evidence that the dies were too heavy to be lifted by one person alone. The evidence was sufficient to support the inferences that defendant knew that the dies in the van were stolen and that he participated in possessing the stolen property. Viewed in a light

most favorable to the prosecution, the evidence was sufficient to support defendant's conviction of receiving or concealing stolen property. *Wolfe, supra*.

Next, defendant argues that he was denied due process and a fair trial when the prosecutor vouched for the credibility of the security guard witness and stated that the witness testified truthfully. We disagree. Defendant did not object to the prosecutor's comment. Appellate review of alleged prosecutorial misconduct is precluded unless a curative instruction could not have eliminated possible prejudice or the failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

Here, the prosecutor commented on the evidence and made the assertion that the witness was credible in response to defense counsel's argument that the witness lied on the stand. In this context, the prosecutor's comments were proper. *Id.*; see also *People v Lodge*, 157 Mich App 544, 550; 403 NW2d 591 (1987). A curative instruction would have eliminated any possible prejudice. No miscarriage of justice occurred. *Stanaway, supra*.

Finally, defendant argues that the prosecutor's comment that he had nothing to say at the time he was arrested violated his constitutional right to remain silent. This argument is without merit. The prosecutor did not comment on defendant's failure to testify. Such comment is prohibited. *People v Perry*, 218 Mich App 520, 538; 554 NW2d 362 (1996), *aff'd* 460 Mich 55; 594 NW2d 477 (1999). Furthermore, the prosecutor did not make improper comment on defendant's silence in the face of accusation, *People v Bigge*, 288 Mich 417, 420; 285 NW 5 (1939), or at a time when he was subject to interrogation. *People v Raper*, 222 Mich App 475, 479; 563 NW2d 709 (1997). No constitutional error occurred.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White